IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 16297 of 2007(M)

AGAINST THE ORDER DATED 4TH OCTOBER, 2006 IN IA 1909/04, IA 1910/04 IN OS.481/1996 of MUNSIFF COURT, THALASSERY

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PETITIONER: 9TH RESPONDENT IN IA 1909/2004 & IA 1910/2004/D5 IN OS 481/96:

V.K.GOVINDAN, S/O.KANNAN,
VANIYANKANDY HOUSE, EDAKKAD AMSOM.
CHALA PADINHAREKANDY DESOM, KANNUR TALUK,
KANNUR DISTRICT.

BY ADV. SRI.R.PARTHASARATHY

RESPONDENTS: PETITIONER.& RESPONDENTS 1 TO 8 & 10 TO 24 IN IA 1909,1910/04/D21 & 1 TO 4 & 6:

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1. **BANKANTAVIDA MARIYATH,**
   W/O.ABDUL KHADER, RUKHIYA MANZIL,
   KANNUR I AMSOM, NEERCHAL DESOM,
   KANNUR DISTRICT.

2. **PUNATHIL KUNNUMBRATH KAMALA,**
   W/O.GOVINDAN, EDAKKAD AMSOM,
   KIZHUNNA DESOM, KANNUR TALUK KANNUR DISTRICT.

3. **PUNATHIL KUNNUMBRATH BABY,**
   D/O.GOVINDAN,KANAKAM, -DO-.,-D0-.

4. **PUNATHIL KUNNUMBRATH PRADEEPKUMAR,**
   S/O.GOVINDAN, -DO-, -DO-.

5. **PUNATHIL KUNNUMBRATH SATHYABHMA,**
   D/O. -DO-.,-DO-.

6. **PATTAYATHIL KUNNUMBRATH KALLU,**
   D/O.RAMAN, POYIL HOUSE, EDAKKAD AMSOM,
   KIZHUNNA DESOM, KANNUR TALUK, KANNUR DISTRICT.

7. V.K.MYTHILI, D/O.KANNAN, KAKKAT,
   PUZHATHI AMSOM, KAKKAT DESOM,
   KANNUR TALUK, KANNUR DISTRICT.

8. V.K.JANAKI, D/O.KANNAN,
   VANIYANKANDY HOUSE, EDAKKAD AMSOM,
   CHALA PADINHARANDUKANDY DESOM,
   KANNUR TALUK & DISTRICT.

9. V.K.MEENAKSHI, D/O.KANNAN,
   CHALIL VEEDU,CHEMBILODE AMSOM, THANNADA DESOM,
   P.O. CHALA EAST, KANNUR TALUK.

10. V.K.NARQYANAN, S/O.KANNAN,
    VANIYANKANDY HOUSE, EDAKKAD AMSOM,
    CHALA PADINHAREKANDY DESOM,
    KANNUR TALUK & DISTRICT.

11. K.P.DEVU, D/O.PANJU, RAYAROTH VEEDU,
    CHEMBILODE AMSOM, EDACHOVVA DESOM,
    KANNUR TALUK & DISTRICT.

12. K.P.SAROJNI, D/O.PANJU,
    CHARUKANNAN'S HOUSE, ELAYAVOOR AMSOM,
    EDACHOVVA DESOM, KANNUR TALUK & DISTRICT.

13. K.P.GANGADHARAN, S/O.PANCHU,
    AMRURTHA, CHEMBILODE AMSOM,
    CHALA KIZHAKKEKKARA DESOM, KANNUR TALUK & DISTRICT

14. K.V.DAMAYANTHI, W/O.KARUVAN,
    K.V.HOUSE, MAVILAYI AMSOM, DESOM,
    KANNUR TALUK & DISTRICT.

15. K.V.SURESHAN, S/O.KARUVAN, -DO-, -DO-.

16. K.V.SUMESH BABU, -D0-

17. K.V.SUDEESH, -DO-

18. RAYAROTH LAKSHMI,
    W/O.ACHUTHAN -DO-.

**19. RAYAROTH USHAVATHY, D/O.ACHUTHAN,
K.V.HOUSE, MAVILAYI AMSOM, DESOM, KANNUR TALUK &
DISTRICT.**

20. RAYAROTH UMA BABY, -DO-, -DO-.

21. RAYAROTH OMANA, -DO-, -DO-.

22. RAYAROTH NALINI, -DO-,.

23. RAYAROTH SHEEBA, -DO-, -DO-.

24. RAYAROTH SHEENA, -DO-.

**BY ADV. SMT.SEEMA
SRI.RAJESH NAMBIAR**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.16297/2007 M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PRELIMINARY DECEE DTD. 6/02/2001 IN O.S.NO.481/96.**

EXT.P2: **COPY OF THE FINAL DECREE PASSED BY THE LEARNED MUNSIFF IN I.A.2228/2001 IN 481/96.**

EXT.P3; **COPY OF THE AFFIDAVIT FILED ALONG WITH THE APPLICATION TO SET ASIDE EXPARTE DECREE.**

EXT.P4: **COPY OF THE AFFIDAVIT FILED ALONGWITH THE APPLICATION TO CONDONE THE DELAY.**

EXT.P5; **COPY OF COUNTER FILED IN I.A.1904/2004.**

EXT.P6: **COPY OF THE ORDER PASSED IN I.A.1909/2004 IN O.S.481/96 BY THE MUNSIFF COURT, THALASSERY.**

EXT.P7: **COPY OF THE ORDER PASSED IN I.A.1910/2004 IN O.S.481/96 BY THE MUNSIFF COURT, THALASSERY.**

EXT.P8: **COPY OF THE COMMISSIONER' PLAN ATTACHED TO THE FINAL DECREE.**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 16297 OF 2007

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Dated this the 17th day of September, 2007.

J U D G M E N T

This writ petition is filed against the orders in I.A.1909 and 1910/04 in O.S.481/96. The petitioner therein is the 21st defendant in the case. Those applications are filed to condone the delay of 1313 days and to set aside the exparte decree against D21. The Court below condoned the delay and set aside the exparte decree. It is aggrieved by that decision the 5th defendant who is the 9th respondent had come forward with this writ petition.

2. The suit is one for partition of the property. It is the case of the 21st defendant that she had purchased 20 cents of property from defendant No.1 and others by virtue of a document No.2439/96. Since, there was no proper service of notice and the publication was in wrong address she had moved the application for setting aside the exparte decree. The Court below on a consideration had condoned the delay and set aside the exparte decree. It is against that

decision the present writ petition is filed by the 5th defendant/9th respondent.

3. The learned counsel for the writ petitioner had taken me to the address given for the supplemental 21st defendant in the decree as well as her address in Ext.P4 application. I find the address shown in both are one and the same. The Court below in Ext.P6 order had just relied upon the contention raised by the 21st defendant that publication was also effected stating a wrong address. The case had been decided on the submissions made by the counsel and when the entire case bundle was available before Court it is the paramount duty of the Court to find out what is the truth. If the address shown in the decree and the address shown in the petition are one and the same, then naturally under ordinary circumstances, the publication also should have been taken out in the same address. But, this is a matter that has to be verified.

4. The service of summons is a very crucial point and if really there is no service of summons as contemplated under law, one cannot even hold that there is delay in filing

the application for setting aside the exparte decree. So I feel the matter has to be reconsidered by the Court below and therefore I set aside the order and direct the Court below to consider both these applications afresh after affording equal opportunity to both the parties and also peruse the documents and dispose of the matter in accordance with law. I am also informed that D21 has already transferred the property to third persons and they have also filed application Nos.132/06 and 133/06. That are all matters which depend upon the result of the two I.As. filed by the 21st defendant. That also may be considered by the Court below. Being a very old matter I direct the Court below to dispose of the matter as expeditiously as possible within a period of two months from today. The parties are directed to appear before the Court below on 17th October, 2007.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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